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UNJUSTIFIABLE WAR AND THE MEANS TO AVOID IT *

1. THE CONCEPTION OF JUST WAR

In the beginnings of international law, in Grotius and his predecessors and immediate successors, discussion of the Right *of* War, the *jus ad bellum*, takes up a great deal of room by the side of the Right *in* War, the *jus in bello*. Today, however, the question, When is war justified? has almost ceased to be discussed. The so-called predecessors of Grotius, like himself and his immediate followers, accepted from the Roman law the notion of the *bellum justum piumque*. This concept was purely formal. To make a war a *bellum justum piumque* nothing more was required than compliance with the precepts of the fetial law as to the formalities of declaring war. To be sure, these, at least originally, required a resolution of the Senate and its ratification by the Centuriate Comitia. Later, however, this requisite, to which one could perhaps not always deny some material significance, completely disappeared behind the empty ceremony which the *Pater Patratus* performed at the boundary of the enemy country with the "*hasta ferrata aut sanguinea præusta*" hurled across the same. Nay, in the war with Pyrrhus, a deserter from the former's army was allowed to buy a piece of ground in Rome, into which the spear was flung as into hostile territory, in order that the *Pater Patratus* might not have to go all the way to the frontier.¹ On these formalities, which naturally became more and more futile, Roman historians based their country's reputation of never having waged an unjust war. Still, the fetial law had at least the one advantage of giving the adversary a 33 days' respite for deliberation.²

To that meaningless formal conception of war Christianity sought to substitute a conception of just war based upon its merits. It was St. Augustine who, in his indictment,—for such his masterpiece appears to

* Translated from the German by Aloysius Wenger, of Washington, D. C.

¹ Weiss, *Le droit fetial*, Paris, 1883, p. 27; Fusinato, *R. D. I.*, XVII (1885), p. 278 ff.; Phillipson, *International Law and Custom of Ancient Greece and Rome*, II, 329.

² Phillipson, II, 335.

be,—of the Roman State and the whole of pagan civilization, set up another, deeper, material and less formal concept of war, which he developed more fully in his commentary on the Book of Joshua.³ According to him, only such war is just as is intended to avenge a wrong, to chastise a State for its failure either to punish one of its subjects for a wrong committed by him against another, or to restore what the State itself has unlawfully taken from another. Closely adhering to Augustine, Thomas Aquinas teaches,⁴ that three things are needed in order that a war may be called just: first, it must be ordered by the lawful authorities; secondly, there must be a *justa causa*, *i. e.*, the foe who is being attacked must deserve this by reason of a wrong imputable to him; and, thirdly, there is required a right intention on the part of the attacking party, that is, a purpose to promote good, or to avoid evil.

The doctrine of the Church on war received its finishing touch in the writings of the Jesuit Francisco Suarez (1548–1617), whose great influence upon the natural law theory of international law is universally recognized. Leaning upon the Roman law theory of possession, he requires for the justification of war, in addition to its proclamation by the legitimate power, also a just cause and a good title; he further demands observance of due formalities and fairness in beginning the war, and in its prosecution and conclusion (*debitus modus et æqualitas in illius initio, prosecutione et victoria*). By *justus titulus* he too understands a wrong, and indeed a grievous wrong, proportionate to the evil of war. In weighing this motive for war, the prince ought to proceed conscientiously. The best and safest course, according to Suarez, would be to let arbitrators decide as to its adequacy. But arbitrators capable of inspiring sufficient confidence in both parties are not easily found, he thinks; therefore, this mode of deciding has become “*rarissimum*” and the prince may, provided he be in good faith, rely upon the judgment of learned and prudent men (*prudentes et docti viri*), appointed by himself.

The requirement of a *justus titulus* or of a *justa causa* is a very long step forward in comparison with Roman law; for there it was not a question of intrinsic equity, but merely of external, formal legality.

³ Cited in the *Decretum Gratiani*, III, C. 23, que II, C. 2.

⁴ *Summa Theologica*, II qu. 40d. *Bello*, Art. 1.

One great difficulty in deciding the question whether or not a war be just, evidently lies in the fact that in almost all cases both parties claim to have the *justa causa belli* on their side. Can a war actually be a just one on both sides? This question has occupied in most lively fashion all authors who have treated the right of war according to the principles of Christianity. With very few exceptions, they have all answered this question in the negative. Only when on one side there is an innocent mistake as to facts, can a war, in their opinion, be actually regarded as a just one for both parties. And yet the contrary might not seldom be true. Not always is all the right on one side alone, and on the other only hypocrisy and sheer pretense of right. In many cases it is merely a question of how far back one follows up the chain of causes which have led to the war. A war may in its *proximate* cause be just, on the one hand, and in its *remote* causes be just on the other. Even as penal law opposes the *auctor rixæ*, the originator of the strife, to the *auctor pugnæ*, the beginner of the fray, so the matter often stands in war. Only a mind penetrating to the remotest ramifications of the network of causes would in many cases be competent to decide on whom the original guilt rests. A wrong which State A may have committed years ago against State B, produces in the latter a feeling which gradually swells to bitterness, to hate, and finally leads State B to undertake something against State A, which furnishes this latter a just cause for war. Because of this reaction, which the injustice of the one party is wont to provoke in the other, it is extremely important that every difference between states be settled as quickly as possible by peaceful means, and best of all by recourse to law through arbitration, lest through some untoward event a too long-continued tension between the parties concerned may break out into open war.⁵

It being in many cases impossible to answer squarely the question as to which side is right in a war, just as even in private quarrels, *e. g.*, between man and wife or other relatives the fault is often a divided one, it is not to be wondered at that international law, upon descending from the heights of religious and philosophical contemplation to the domain of reality, put the question of the justness of war more and more out of

⁵ Cf. Lammasch, *Lehre von der Schiedsgerichtsbarkeit* in the *Handbuch des Völkerrechts*, Vol III, Part 3, p. 35 ff.

circuit. But this was not a step forward on the part of mankind. Even Hugo Grotius still explicitly teaches (L. II, cap. 1 and 22) that the legitimate cause for war consists solely in the wrong suffered, and refers to Augustine as his authority for the statement; but, that even *ex justis causis* war must not be undertaken rashly (L. II, cap. 24). To warn against wanton wars is the main purpose of his work *De Jure Belli ac Pacis*. Observing with horror for what trifling causes war in his days was often entered upon, and how all regard for divine and human rights vanished in war, he sought to show that there existed between states a common right that ought to prevail for wars as well as during wars (*esse aliquod inter populos jus commune, quod et ad bella et in bellis valeret*) (Prolegomena). The *jus ad bellum* has, however, disappeared from modern science. International law puts up with war as with a historical fact, without differentiating the rights of belligerents according to their right or lack of right to make war.

Surely only an intellect, such as de Laplace postulated ⁶ in a famous passage, but not that of our diplomats, would be competent to say which war is intrinsically just and which intrinsically unjust.

2. THE CONCEPTION OF JUSTIFIABLE WAR

But it is quite a different matter to determine whether a state, before it draws the sword, has done all that may be asked of it to reach a peaceful adjustment of its difference with another Power, or an equitable compromise of their conflicting interests. Nowadays, where the interests of all nations and states interweave, even the states that are apparently not concerned have the right to demand such a course from their fellow states. Experiences of recent date have shown that a war whose occasion may concern only two or three Powers has a tendency to carry away others too, and that a war of such dimensions, because of the enormity of the evil for the whole community of states, entitles all to demand from each other enough consideration so that they will resort to it as the last, the very last, expedient, only after having seriously tried all other remedies and these have proved unavailing. Wherefore, the Powers not directly interested in the conflict are entitled to be heard when proposing

⁶ Laplace, *Essai Philosophique sur les Probabilités*, Paris, 1814, p. 3.

mediation, and they are further entitled that they shall be bound to regard a war between other states as justifiable only when their proposals have been taken under earnest consideration. It is true that, according to the modern acceptation of the term sovereignty, it cannot be said that any states have, with respect to others, a right absolutely to forbid them the waging of war. But neither, as was recognized in Article 3 of the Hague Convention of 1899 for the Peaceful Settlement of International Disputes, can they be denied the right to tender the states engaged in war their mediation or their good offices and, indeed, in such way and under such concomitant circumstances that this offer shall not be disregarded from the outset. To the outsider's right to offer his mediation there must correspond the duty of the contending parties, not, forsooth, to accept the mediation proposals, but certainly to listen to them and to take them under serious consideration. If it be "useful and desirable" (Article 3) that the strangers to the dispute tender their mediation, then the party which refuses even to hear their proposals violates his duty toward the Powers entitled to offer mediation, inasmuch as their intercession "must never be regarded as an unfriendly act" (Article 3, paragraph 3). For good reasons, therefore, did the Conference of 1899 reject the utterly illogical motion of Veljkovitsch that, as a converse to the Nigra motion, the Conference explicitly declare also that the refusal to accept a proffered mediation should never be regarded as an unfriendly act.

While heretofore an offer of mediation has been viewed rather as a "kind service" rendered to those bent on war, in the present state of the world this right is founded upon the rightful interest of those Powers that desire to preserve the peace of the world. If neutrals did not know it before, then the present war has opened their eyes to the fact that they cannot be left untouched by a war waged between great Powers. The notion that war affects only the belligerents and is for all others a *res inter alios acta*, is entirely false. As a matter of fact, even Abyssinia and Liberia have not been left untouched by the consequences of the present war. The Powers deeply engaged in international commerce have suffered economic damages which cannot be much less than those of many a war in the past. It is especially through the stoppage of commerce on the "free sea" (*difficile est, satyram non scribere*) that they

have incurred most serious losses in their import, export and transit trade and have thereby been thrown into crises which have reduced the earning powers and means of subsistence of millions of people. The mobilization of nearly all the armies of Europe has also put the neutrals to enormous expense and cut deep into the incomes of families, their earnings and businesses. Numerous subjects of neutral states who heretofore peaceably followed their avocations in the territories of the belligerents, have been profoundly affected in their relations by the economic upheaval in those states. Family ties and business connections, which had been considered insoluble, have been most painfully disrupted. Citizens of neutral states have been maltreated because of the identity or similarity of their language with that of the belligerents. Investments made by neutrals in the war zones have been wrecked, etc., etc. Only when the war is over will it be possible to strike its frightful balance, frightful not merely for the belligerents, but also for the neutrals.

Speaking for America, Nicholas Murray Butler had this to say very recently:

It is idle to say that the American people are on the other side of the world and that these clashings and crashings are no concern of theirs. Ask the cotton-grower of the South, or the copper miner in the far West, or the lumberman on Puget Sound, or the shipper in New York, Baltimore or New Orleans, or the banker in Wall street, in State street or in La Salle street, whether he knows that there is a war in Europe, and get his answer. Ask the student of international law, or the expounder of political ethics and the sanctity of treaties, or the devoted believer in civil liberty, whether the United States has any interest in the conflict, and get his answer.⁷

And for Chile, its representative at the International Agricultural Institute in Rome, Mr. Aldunate, declared that the financial consequences of the European War are so serious for his country that it is compelled to practise the most rigorous economy and is no longer able to contribute its customary yearly quota of 40,000 francs, but must ask to be enrolled, until further notice, in the second class of states with a contribution of only 20,000 francs.⁸

⁷ The Changed Outlook, New York, 1915, p. 5.

⁸ *Procès-verbal du comité permanent*, 30 October 1915.

Compared with the enormous total of damages, sorrows and miseries, which even the neutral Powers and their subjects have suffered in this war; compared with the irreparable agricultural losses in all countries, the profits made by individual manufacturers and speculators in neutral states, by a traffic which, judged by its effect, is a traffic in human lives, are not worth considering. True, not all gains derived from war are immoral like the above. The earnings of shipping companies and of peace industries are from a moral standpoint quite unquestionable. But even these can not be decisive in the face of the tremendous national losses. From this due balance of war, even for neutrals, they will learn to strain every nerve never again to be taken unawares by a world war, and promote every measure for making a repetition thereof more difficult and unlikely.

The days are no more when the suburban citizen, taking his stroll upon the towered ramparts of his native town, could chuckle with delight because he knew of no more pleasant holiday pastime

“Than to talk of war and battlecry,
When yonder in far away Turkey
Nations pounce upon each other.”

Today the “*et tua res agitur!*” applies to him too. Wherefore, his state has a right to call out to those lusting after war: “Listen to me; I will try and settle your dispute. Should I fail in my honest endeavors, you are welcome to smash each other’s skulls. *But hear me you must, and that willingly and in earnest.* Whoever turns down this request of mine, him I shall treat as a *disturber of the common peace*. His war I shall regard as an *unjustifiable one*; that of his adversary as *justifiable*. I shall *hold him responsible for every damage* which I myself and my citizens may suffer through his obstinacy and his lack of consideration for us. I shall not, indeed, attack him *myself*; but I shall allow my citizens everything *against* him and nothing *for* him. They may, if they please, enlist in the army of his adversary, and supply the latter with money and war material. But to *him* they shall give no such help.”

This way of differentiating the party entitled to make war from the party not entitled in this sense, being based upon external, easily ascertainable facts, would be just as easy to carry out as a differentiation of

just from unjust war founded upon the ætiology of the war will almost always fail in practice. Should the mode of differentiating, as here proposed, gain international recognition and standing among civilized states, they would, in their mutual relations, reach that degree of civilization which the German Empire attained in its internal organization 700 years ago, through the Public Peace statute of Frederick II, of 1235, which permitted self-help through private warfare only when recourse to judicial proceedings had been had in vain. War would thereby be forced into a subsidiary position. States would resort to this extreme, desperate expedient only after having actually exhausted all pacific means.

3. PROBLEM OF THE CIVILIZING VALUE OF WAR

Would it be desirable to relegate war to such a subsidiary status? Does not rather war possess an independent cultural value, distinct from all pacific means of settling disputes? The attempt to establish this has often been made, even very recently by Steinmetz in a work which distinguishes itself among many of its predecessors by a striving after freedom from prejudice truly worthy of appreciation.⁹

It would be folly not to recognize that war can also produce favorable results. Is there, generally speaking, an evil that does not result in or bring with it some good, or any good thing that does not bring with it or result in some evil? The only question is whether in war the good outweighs the bad, as Steinmetz emphatically *asserts*.¹⁰

The main, and in a certain sense a new, argument in his reasoning, is to the effect that war is the only effectual "states competition" for stimulating human activity and hence can "never be abolished without detriment to mankind" (page 208). To begin with, no man of judgment thinks of "stopping" war by means of a treaty or decree. The most that may be hoped for, in the distant future, is that war, like other antiquated institutions, and like bodily organs whose functions have been taken over by others, may gradually die out, become "rudimentary," as evolutionists express it. Steinmetz is probably right, that for the development of the

⁹ *Philosophie des Kriegeres*. Leipzig, 1907. Compare in particular, pages 13 ff., 73 ff., 335 ff.

¹⁰ Page 190, "If there were no war it would have to be invented!"

human race the possession of aggressive propensities, a right good dose of pugnacity, was of advantage, perhaps even a necessity. "Then already was it to man's best interest to have incurred the enmity of man. * * * Among God's most precious gifts to man belongs a genuine foe" (p. 21). The struggle with the animal world, and the overcoming of elemental difficulties alone would not have developed man's physical and intellectual faculties to the same extent as battling with fellow-beings of like intelligence. Without doubt, even today a social order in which every occasion for competition were wanting would lead to racial retrogression. But, in our day, does this emulation still consist in strife alone, in bloody life-and-death struggle? No doubt, war is an important transition stage of man's evolution upward. But such also was slavery. Would Grecian culture, to which we owe so much, have been possible had not slaves performed all menial labor and thereby relieved the free-born Hellenes? And even so, was revenge for blood a necessary prodromal stage in the evolution of public punishment? Who would, on that account, justify slavery or feuds as suited to our times and circumstances? For the world of today that argument is therefore not pertinent. Granted that a man of Tolstoy's spiritual type would have been an unfit ancestor of the human race, what follows from that for the present time?

Not merely "symbolical" (p. 200), but real competition between states is possible also in peaceful ways. For, is it not given to every state to compete with the others in exerting all its powers to assure to its citizens the highest development of their faculties, and make life for them really worth living as a steady advance toward a loftier psychical evolution. Steinmetz may rest satisfied that in a state pursuing such a course the citizens would not "die from sheer tedium," as, according to his assertion, happened to the Indian wards of the erstwhile Jesuit State of Paraguay.¹¹ Such a state would not only make the greatest achievements possible for those who belong to it, but exert a powerful attraction on the citizens of other states. It would not thereby weaken itself, but rather gain new strength.

¹¹ In regard to the Jesuit dominion in Paraguay and the consequences of its destruction, compare the judgment of Elisée Réclus, *Nouvelle géographie universelle* XIX, p. 497 ff., one certainly not suspected of clerical bias.

Likewise erroneous is Steinmetz' assertion that the abolition of feuds *within* states cannot be regarded as a precedent for putting down warfare *between* states (p. 211). If for "direct state conflicts" there is no other form than war, then is there also for direct conflicts among individuals no other form than the sanguinary man-to-man fight. Like Hegel, Steinmetz extols war as a world judgment, as the "executioner" of states sentenced to death by the verdict of history (p. 222). In such a deduction from history one must never put the episode above the final act, and never forget that if defeat is to pass for condign punishment of the vanquished, victory must be viewed as the just reward of the opposite party. Had Steinmetz taken this into consideration, not only would his Dutch conscience have caused him difficulties in his review of the Boer War (p. 230), but also his verdict about Jena (p. 223) and the partition of Poland (p. 232) would probably have been different. Or should, peradventure, Cannæ be regarded as evidence of Rome's unfitness to live in Hannibal's day? For the rest, Steinmetz is not combating the ideals of thoughtful pacifists, but those of phantastic Utopians. No judicious pacifist wants to gather mankind into one single state, but while preserving in general their individuality, unite existing states into a "union of purpose" for insuring peace. But neither will this union be a perpetual one.

As long as "folly and passion," as Treitschke¹² so aptly says, "are great Powers in the world's history," war will not die out. And it is scarcely to be assumed that wisdom and prudence will ever come into uncontested control. This conviction does not, however, preclude the thoughtful from attempting to press their conviction. Even if the time has not yet come for the fruits of conviction to ripen, it is none the less the duty of all who are imbued with this conviction to spread it and make it sink deeper and deeper.^{13, 14}

¹² *Politik*, II, 544.

¹³ Viscount Morley, on Compromise, London, 1913, *The Realization of Opinion*, p. 201, at p. 216 ff.

¹⁴ Against Steinmetz compare also much that is pertinent in Colenbrander, *Tien jaren wereldgeschiedenis*. The Hague, 1915, II, 339 f.

4. THE VALUE OF GAINING TIME

If a number of states, with at least one great Power among them, were to accost the bellicose ones with a request such as that described in Part 1, and demand that they postpone hostilities for, say, three months, in order that during this delay, with the coöperation and under the lead of the mediators, the negotiations already broken off may be resumed and continued, there would thus be gained what in many cases is the most important element: Time. By postponing the commencement of hostilities it would no doubt be possible in many cases to preserve the peace, not so much, perhaps, through the mediator's influence as through a change of temper in the war-inflamed states themselves, both parties having in the meantime become convinced that a mutual reconciliation, with perchance an honorable adjustment, is better than war with its always uncertain outcome and usually disproportionate sacrifices. The most important thing, in questions of such consequence and responsibility, is to exclude the use of the telegraph.¹⁵

It is true that every nation contains numerous and influential elements tending to predispose the state for war. First, of course, come the military circles, which, of necessity, must, at least now and then, be straining at the leash to prove their efficiency, to show what they can do. These would, indeed, be downright untrue to their calling if in a conflict between their state and another one they failed to take into consideration also the latter's high-handed, bloodthirsty decision. But apart from these professional war-seeking elements, there are in every state still more influential circles at work seeking in a business-like manner, through thirst for lucre, greed, or profit, to involve their country in war: the combined armaments industry for war on land, by sea, undersea and in the air, nowadays, thanks to progress in technique, so frightfully developed and ramified; those guilds of war parasites, eager to exploit for their own profit, by means of price manipulations and usurious exactions the millionaire armies' demands for enormous and quick deliveries, many of them even stooping to embezzlement, fraud and falsification; stock-jobbers, who, through the rise and fall of stocks, do their most profitable business not so much during war as in times of threatened war;

¹⁵ Regarding the suddenness with which the Franco-Prussian War broke out, compare Higgins, *War and the Private Citizen*, p. 24 f.

the great powers of finance, who derive from war loans their profits amounting to millions and thereby become the real kings of kings; magnates of the press, who during war obtain a sway over the minds and feelings of the nation, which is denied to its noblest thinkers and investigators. All these elements which, no matter how embarrassing they may often be to the governments, are nevertheless not restrained by them in season, because, forsooth, they themselves desire to make use of them on occasion, are able, by working together, to throw nations into a psychopathical fit in which they actually believe they want war. But this mood cannot last long. No matter how strong the mental contagion emanating from those circles may be, it is equally as fleeting. Within a few weeks after the danger of war has become imminent, when no one can any longer doubt the extreme gravity of the situation, when feverishly accelerated armaments have already reduced a large part of the nation to a state of war, when all able-bodied men have been snatched from their families, their callings and their occupations, all the latent tendencies that make for peace will also come into action on both sides. The combined civil administration, the departments of finance, industry, commerce, agriculture, transportation, education, justice, will express their scruples; the clergy, physicians, heads of families, the women-folk, will raise their voices in protest; economic organizations will warn and dissuade. Even though everything be carried out in perfectly legal form, and perhaps even parliament and the freedom of the press may already have been suspended as a war measure, the opposition will none the less make itself felt with sufficient power. This opposition on both sides will cause the governments, which until now were both bent on war, to ask themselves once more whether the uncertain outcome is worth the certain losses and whether they had not better heed the advice of the mediator and place the drawn sword back into its scabbard. This pacificating influence of time, of postponing hostilities, had already attracted attention at the Second Hague Peace Conference in connection with the subject of declarations of war. A motion by the Russian Colonel Michelson and the Dutch General den Beer-Portugael proposed that between a declaration of war and the beginning of hostilities there should be interposed a respite of at least 24 hours.¹⁶ In support of this motion they

¹⁶ *Actes et docs.* I, p. 133; III, pp. 165 to 176.

pointed, among other things, to the possibility of utilizing this interval for an attempt at mediation by neutrals. The motion was, however, categorically rejected by most of the great military Powers,¹⁷ evidently because they did not want to divest themselves of the advantage a start in mobilizing would possibly afford. Likewise in the future it will scarcely be possible to provide by means of a general agreement between *all* nations for such a delay for further reflection.¹⁸ Individual Powers will be ready for it in *their relations with one another*. But an agreement, in which all great military Powers would take part, will for a long time lie outside our range of vision. No matter how deserving all movements in this direction are, world peace will not be insured by means of a treaty between those nations from which its disturbance would have the most to be apprehended.

Meritorious proposals of this sort first came from America. They were contained, in the first place, in the draft of an Anglo-American arbitration treaty drawn up by Secretary of State Olney and the British Ambassador, Pauncefoot, then more especially in the Bryce-Knox treaties of 1911, which, unfortunately, were also rejected by the American Senate. However, the idea of the paramount importance of gaining time, of allowing a further delay for deliberation, was carried over into the positive conventional law of a series of states through the United States treaties of 1912, elaborated by the American Secretary of State Bryan. By virtue of these treaties the contracting states have bound themselves to submit all disputes, which can not be settled by diplomacy and which they are not obliged by existing treaties to submit to arbitration, to investigation by a permanent international commission and have agreed not to declare war or begin hostilities before this commission has made its report, which must be presented within one year at the latest.^{19, 20} That great military Powers would be willing to conclude such treaties

¹⁷ Austria-Hungary abstained from voting. III, p. 176.

¹⁸ Cf. Savornin-Lohman, *Gedachten over oorlog en vrede*, The Hague, 1914, p. 67.

¹⁹ For these treaties, see Lange, *The American Peace Treaties*, Christiania, 1915. Cf. also Beaufort, *De oorlog en het volkenrecht*, Amsterdam, 1915, p. 14 f. See also SUPPLEMENT to this Journal, pp. 263-309.

²⁰ The treaty with San Salvador, moreover, contained the provision that during the term allowed the commission for making its report, "neither state should increase its military or naval armaments," a standard which very properly was not retained in any of the ratified treaties, Lange, *ibid.*, p. 15.

with their neighbor states, great or small, is, as already stated, most improbable, for the simple reason that they will not be willing to forego the chances of a presumed start in war preparations. On the other hand, it is altogether possible that they may enter into a treaty of this sort with states from which they are separated by great distances.²¹

For the same reason it is precisely these Powers who will likewise not feel inclined to recognize themselves or to participate in an international conciliation council (*Conseil de Conciliation*) as proposed by Woolf²² and the *Anti-oorlog-raad*,²³ no matter how valuable these conventions may be in themselves.

5. THE NEUTRALS' RIGHT OF MEDIATION

The idea developed above differs from the proposals previously referred to in that it does not make the procurement of the stay of hostilities dependent on the good will of the states involved in the quarrel, nor presupposes between them the existence of a treaty pursuant to which they would forego to take advantage of their lead in preparedness. To realize the present proposal only requires a firm resolve on the part of those not involved in the dispute to take vigorous action in the interest of the maintenance of peace.

It will, of course, be immediately objected that this proposal exposes the very neutrals whom it aims to save from harm, to a much greater peril; that it is intended to spare them the indirect disadvantages of war but exposes them to the danger of having to endure its direct effects; that it exposes them to the risk of themselves becoming implicated in the war: for a Power, determined to make the most of its advantage in armaments and not to acquiesce in any postponement of hostilities, would have the right to answer that threat with a declaration of war against the menacing party. Theoretically this is perfectly correct. In practice, how-

²¹ Had the German Empire accepted the treaty proposed to it by the United States, the risk of its becoming involved, during the European War, in war with America too, would have been considerably lessened in advance, because from the appointment of the commission until war became permissible a year's time for reflection would have had to elapse.

²² *New Statesman*, 10 July 1915.

²³ Report of von Loder and Suyling, *Avant-projet d'un traité général relatif au règlement pacifique des conflits internationaux*, The Hague, 1916.

ever, there is no reason to fear that this will happen when the mediation offer, ensuing under the sanction herein explained, proceeds from a confederation of neutrals sufficiently numerous, powerful, determined and united. The combined power of the states interested in the preservation of peace will surely always be greater than that of one of the parties facing each other with warlike intent. No one, be he ever so strong, will want to draw upon himself, in addition to the adversary he is about to attack, so many accessory foes. Only a state intent upon a plain war of conquest would categorically refuse every pause likely to prejudice his start in preparedness. But by his refusal he would *ipso facto* reveal that such is indeed his object in going to war, a thing that surely everybody would want to avoid as much as possible. Everything, therefore, depends upon such a combination of neutrals to demand from the warlike parties a stay of hostilities, and possessing sufficient authority and adequate power to press its demand. The announcement that the two belligerents will be treated differently must be sufficient to cause the party which is inclined to exploit his lead in preparedness to desist. The disadvantage to him of the support held out to his opponent, must outweigh in his estimation the advantages resulting from greater preparedness.

Obviously such a federation of neutrals will not be composed of the same Powers in all cases; for it will consist of those states which are not interested in the concrete quarrel and are, therefore, resolved to attach themselves to neither of the contending parties in this case, but to remain neutral. In one case it will be these Powers, in another those. But in order that the concert may get into action promptly, which is absolutely necessary, there is need of a permanent nucleus. This is furnished by such states as are determined never to wage any war other than a defensive one; the neutralized states and those that aspire to recognition of their neutrality: Switzerland, resurrected Belgium, and the Scandinavian countries, possibly also the Netherlands. These states would have to declare themselves in advance as prepared to take such a step in future cases and without delay to summon all other Powers, which according to the peculiar circumstances of the case will presumably remain neutral, to join them.

Among these Powers there will almost always be found some great

Power, in particular, the United States of America, if the Monroe Doctrine may also be conceived as a declaration of non-intervention in European affairs. In this hypothesis it is not likely that any state, no matter how eager and well prepared it may be for war, would want to run the risk of seeing its adversary reinforced by the support of such a concert, but would rather consent to a stay of hostilities for a few months and to renewed attempts at compromise. At the expiration of that term, should it be impossible to adjust the difference, he would recover full freedom of action and no longer have to fear those handicaps.

One incidental effect of such a procedure on the part of the neutrals, and one not to be underestimated, is that the value of a lead in armaments would be lessened and thus the struggle of the Powers to attain it likewise reduced. The sacrifice which individual states would thereby impose upon themselves would not be so great as might at first sight appear, illusions in this very subject, being, as experience teaches, by no means rare.

For the neutrals this proposition would have the advantage that the admissibility of deliveries of war material to the one side would be assured to their citizens, while otherwise it is perhaps to be expected that the demand for a general prohibition of such deliveries will grow more and more insistent.²⁴ No doubt, it will be objected that the theoretical admissibility of such deliveries does not always mean a practical possibility, for it may so happen that precisely that state to which deliveries would be permissible, might not need them, or that as a matter of fact they could not reach the state that might need them. The former eventuality is very improbable; for that state which declined to continue negotiations, and to which, therefore, deliveries would not be permissible, will also be the one that does not stand in need of them; while his adversary, to whom they may be sent, will be the party in need. The second eventuality is, of course, again possible in the future. But the stronger the alliance of neutrals, the better will it be in a position to see to it that the rights of those belonging to it are really respected.

²⁴ Cf. my "Mediationsrecht der Neutralen," *Öest. Ztschr. f. öffentliches Recht*, II (1915), p. 214. To the literature there quoted should be added Laudon, *Drie reglen van het tractaat von Washington*, Leiden, 1890, especially p. 77 and p. 103 ff.

To be sure, even this scheme presents no panacea. It too will in many instances fail, either because one of the two parties to the dispute refuses to enter into the proposition, or because an adjustment of the dispute by mediation does not succeed. Neither, however, is likely. At all events, the neutrals, in case their action has been in vain, can with a good conscience say to themselves that they have done everything within human power to avert war.

In order to be able to make the threat, namely, that the neutral Powers will permit their people to give every support to the party willing to negotiate, while, on the other hand, they will forbid any help being given to his adversary, it will be necessary to alter Article 7 of the conventions respecting the rights and duties of neutrals in case of war on land and in naval war, which conventions would otherwise stand in much need of supplementing and emending.

It is perhaps not too optimistic to hope that by the way here indicated the rule of right may penetrate also into the sphere of war to the extent of confining the latter to those extreme cases in which all other remedies for the settlement of differences among states have actually failed. Strangers to the dispute, who exercise with prudence and energy the right of mediation as their most important right of neutrality, will thereby not only serve their own best interests, but also prove themselves in the highest degree benefactors of mankind.

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